

REMARKS/ARGUMENTS

Claims 1, 2, 4-8, 13, 16, 20-22, 27-30, 35-38, 43, 45-49 are pending in the application. Claims 1, 2, 4, 6-8, 13, 20-22, 27, 36-38, 43 and 45 are allowed. Claims 5, 16, 28-30, 35 and 46 are rejected. Claims 47-49 have been withdrawn by the examiner. Claims 16, 46-49 have been cancelled without prejudice or disclaimer.

Applicants also wish to thank the Examiner for her time and consideration during the courteous interview of August 30, 2006. Applicants undersigned representative discussed proposed amendments for overcoming the rejections in the previous office actions. During the interview, the Examiner indicated that the proposed amendments to claim 5 would overcome the rejections of record under 35 U.S.C. § 112, 2nd paragraph.

ENABLEMENT REJECTIONS UNDER 35 U.S.C. § 112, 2NDST ¶ OF CLAIMS 2, 4-8 13, AND 15-16,

Claim 16 and 46 stand rejected under 35 U.S.C. 112, first paragraph. Applicants respectfully traverse these rejections for reasons of record. However, in order to expedite prosecution of the application and without acquiescing to the propriety of the Examiners rejections, Applicants have cancelled claims 16 and 46.

WRITTEN DESCRIPTIONS REJECTIONS UNDER 35 U.S.C. § 112, 2ND ¶ OF CLAIMS 5, 28-30.

Claim 5, 28-30 and 35 stand rejected under 35 U.S.C. 112, 2nd paragraph. Applicants respectfully traverse these rejections. Specifically in section 8 of the office action, the Examiner alleges that claim 5 is vague and indefinite and in section 10, that claims 28-30 and 35 are indefinite as being dependant from a indefinite claim.

Also, in section 9, the Examiner alleges that claim 5 is vague and ambiguous for recitation of " wherein the DNA does not comprise the sequence of SEQ ID NO:4." The

Examiner specifically alleges that the claim is indefinite because the specification discloses that the DNA of SEQ ID NO:4 encodes the protein of SEQ ID NO:5 and thus the limitation that DNA does not comprise SEQ ID NO 4 is in conflict with the recitation in clause c that it does. See 5/24/06 Office action at page 4.

These rejections are traversed in part and overcome in part and will be addressed in turn.

With respect to the rejections in sections 5 and 10, Applicants have amended claim 5 as suggested by the Examiner during the 08/30/06 interview, thus obviating the rejections of claims 5, 28-30 and 35 with respect to the aforementioned aspects of the rejection.

With respect to the rejection in section 9, Applicants respectfully submit that while it is true that the DNA of SEQ ID NO:4 does encode the protein of SEQ ID NO:5, this is not the only polynucleotide sequence that does. Because the genetic code is redundant other nucleotides, besides the exact sequence of SEQ ID NO:4 can encode for the protein of SEQ ID NO:5. This is due to the fact that most of the amino acids are encoded by more than one codon.

Also the specification provides specific support for the DNA other than SEQ ID NO: 4 which encodes a protein of SEQ ID NO: 5 at page 16, lines 17-21 where it states that

"A DNA having any nucleotide sequence based on the degeneracy of genetic code may be included so long as it encodes the amino acids described in SEQ ID NOs: 5 to 8, 10, 12, 13, 21 to 24, 26 to 29, 32, 33, 37 to 40, 46, 48, 54, or 60."

Therefore, the DNA encoding the protein of SEQ ID NO:5 is not limited to SEQ ID NO:4 and so the claim 5 is definite. Accordingly, withdrawal of the rejection is respectfully requested.

Appl. No. 10/088,724
Amdt. dated October 24, 2006
Reply to Office Action of 05/24/06

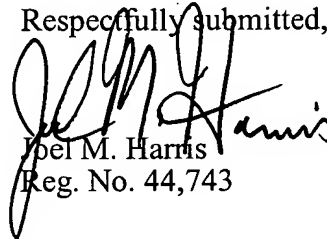
PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



J. M. Harris
Reg. No. 44,743

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300

J7H:sj
60899363 v1